

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 0000064711	FOR FURTHER ACTION		See item 4 below
International application No. PCT/EP2004/007255	International filing date (<i>day/month/year</i>) 03 July 2004 (03.07.2004)	Priority date (<i>day/month/year</i>) 22 July 2003 (22.07.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant SUNGENE GMBH & CO. KGaA			

1. This International preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis* 1(a).

2. This REPORT consists of a total of 7 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the International preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the report |
| <input checked="" type="checkbox"/> Box No. II | Priority |
| <input type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44*bis* 3(c) and 93*bis* 1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44*bis* 2).

	Date of issuance of this report 29 May 2006 (29.05.2006)
The International Bureau of WIPO 34, chemin des Colonnettes 1211 Geneva 20, Switzerland	Authorized officer Agnes Wittmann-Regis
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PATENT COOPERATION TREATY

Translation

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43b(ii.1))

To:

Date of mailing
(day/month/year)

Applicant's or agent's file reference

0000054711

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/EP2004/007255

International filing date (day/month/year)

03.07.2004

Priority date (day/month/year)

22.07.2003

International Patent Classification (IPC) or both national classification and IPC

Applicant

SUNGENE GMBH & CO. KGaA

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43b(ii.1)(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b(a)(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/Z30 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/Z30.

3. For further details, see notes to Form PCT/ISA/Z30.

Name and mailing address of the ISA/IEP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/007255

Box No. 1 Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☒ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☒ in written format
☒ in computer readable form

c. time of filing/furnishing

- ☒ contained in the international application as filed.
☒ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. II

Priority

1. ☒ The following document has not yet been furnished:
- ☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 - ☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).
- Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1 Statement			
Novelty (N)	Claims	<u>1-18</u>	YES
	Claims	<u>-</u>	NO
Inventive step (IS)	Claims	<u>1-18</u>	YES
	Claims	<u>-</u>	NO
Industrial applicability (IA)	Claims	<u>1-18</u>	YES
	Claims	<u>-</u>	NO
2 Citations and explanations:			
<p>The present opinion makes reference to the following documents:</p> <p>D1: WO 03/006660</p> <p>D2: Kausch et al., Plant Biol. (2001) vol. 2001: 151</p> <p>1. Novelty and inventive step (PCT Article 33(2) and 33(3))</p> <p>1.1 <u>Claims 1 to 18</u></p> <p>Claims 1 to 18 appear to be novel and inventive over the cited prior art.</p> <p>The promoter which is used in claim 1 for preparing a transgenic expression cassette for the bidirectional expression of two nucleic acid sequences was known in the prior art (see, e.g., WO 03/006660 (D1), SEQ ID NO:1). On the other hand, even Arabidopsis bidirectional promoters appeared to have been known (see, e.g., Kausch et al. (D2)).</p> <p>A transgenic expression cassette for the bidirectional expression of two nucleic acid sequences, with the expression being controlled by way of the promoter as depicted in SEQ ID NO:1 or 2,</p>			

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

is not disclosed in the cited art and nor does this
art render it obvious.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

2. Clarity (PCT Article 6)

2.1 Claims 1 and 13

A "regulatory sequence" is mentioned in the second and third lines in claims 1 and 13, respectively, whereas item d) refers to "said regulatory element". In order to avoid uncertainties, a uniform nomenclature should be used.